SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1967

No. 455

CLAYTON H. STIEF,

Petitioner,

J. A. SEXAUER MANUFACTURING CO., INC.

and

DIAMOND ALKALI COMPANY,

Respondents.

BRIEF OF RESPONDENT, DIAMOND ALKALI COMPANY, IN ANSWER TO REPLY BRIEF OF PETITIONER

S. HAZARD GILLESPIE
J. ROGER CARROLL
DAVIS POLK WARDWELL
SUNDERLAND & KIENDL
Attorneys for Defendant
Diamond Alkali Company
1 Chase Manhattan Plaza
New York, New York 10005

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PETITIONER'S REPLY BRIEF, MISLEADINGLY, RECITES TESTIMONY WITH RESPECT TO DIAMOND ALKALI COMPANY'S KNOWLEDGE OF THE CONTENTS OF THE LABEL

Page 3 of Petitioner's Reply Brief recites answers to interrogatories which were read into the record at page 598a. These were addressed to witness Carl A. Roth who was employed by Diamond Alkali Company, pages 593a, 594a. This witness, as is set forth at page 3 of Petitioner's Reply Brief saw one can of "Mule-Kick" waste pipe cleaner. This was early in 1959 or in 1958 when "He re-

ceived one can along with a complaint, asking whether we could furnish a smaller size material, so can could contain proper weight."

Petitioner failed to advise this Court that the next interrogatory, page 598a, reads as follows: "Did you read the label and instructions on the can?" "A. Not that I recall as I was only interested in contents", page 599a.

There is nothing in the record to indicate the significance of this testimony with respect to the time at which Sexauer first purchased from Diamond. This could have been an initial inquiry which led to the commencement of a business relationship. In any event, the language is not meaningful in view of the witness' statement that he did not recall reading the label and instructions on the can since he was interested only in the contents.

Dated: New York, New York
September 18, 1967

Respectfully submitted,

DAVIS POLK WARDWELL
SUNDERLAND & KIENDL
Attorneys for Defendant
Diamond Alkali Company
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: HA 2-3400

S. HAZARD GILLESPIE
J. ROGER CARROLL
Of Counsel